

Center on Race, Poverty and the Environment

1224 Jefferson St, Suite 25
Delano CA 93215

Telephone (661) 720-9140
Fax (661) 720-9483

Ralph Santiago Abascal (1934-1997)
Director

Luke W. Cole
Director

Caroline Farrell
Attorney (Delano)

Brent J. Newell
Staff Attorney (San Francisco)

Laurel Firestone
Equal Justice Works Fellow (Delano)

Susana De Anda
Community Organizer (Delano)

February 16, 2005

Cal/EPA Interagency Working Group on Environmental Justice
1001 I Street
Sacramento, CA 95812

Re: Phase I Recommendations to the Interagency Working Group on Environmental Justice

Dear Members of the Cal/EPA Interagency Working Group:

The Center on Race, Poverty and the Environment (CRPE) submits these comments on the Phase I recommendations to the Interagency Working Group. While CRPE approves of CalEPA's efforts to incorporate environmental justice principles and approaches into its work, we fear that the current recommendations will not achieve that result. The definitions are vague. The focus strictly on peer-reviewed scientific data will marginalize and discount grassroots community input, the antithesis of environmental justice. Furthermore, the pilot projects intended to flesh these definitions out have been created in Sacramento with little host community participation. We urge you to reformulate the recommendations in light of these comments.

1. The definition of multi-media cumulative impacts is vague and unworkable.

The definition reads "multi-media cumulative impacts means the combined effects of emissions, discharges and exposures on human health and the environment in a geographic area, taking into account sensitive populations."

The definition does not explicitly define multi-media as air, water and soil. Nor does it specify that exposure encompasses multiple pathways. The definition fails to address the scope of the geographic area with respect to a particular project and does not provide a meaning for sensitive populations.

Perhaps the biggest downfall of this definition is found in the staff recommendation and the Responses to Comments. The definition is based on the intention that peer-reviewed scientific data and guidelines will be used to determine cumulative impacts.¹ This focus on solely scientific methods for measuring cumulative impacts undercuts CalEPA's efforts to ensure public participation in its programs. Grassroots community members suffering the disproportionate impacts do not have the resources to either develop "rigorous" scientific data or hire experts to review other's studies. Furthermore, the pool of scientists able to undertake this kind of work is limited. Many times community groups contact experts only to find that they cannot perform the review because of a conflict of interest. This is particularly true in small markets, like rural areas. Keeping the community from being involved in defining the problem of cumulative exposures will ensure that disproportionate impacts are not identified or addressed.

2. The Definition of the Precautionary Approach is not Adequately Protective.

The precautionary approach "means taking action to protect public health or the environment if a reasonable threat of serious harm exists based upon best available science, even if absolute and undisputed scientific evidence is not available to assess the exact nature and extent of risk." This definition is not informative at all and turns the precautionary principle on its head.

What is considered reasonable? How will that be determined? Waiting for a threat of harm to be serious is not protective. Rather, threats of harm should be avoided. The Responses to Comments on the Precautionary Approach state that the definition is neutral as to the burden of proof. But, by its very terms the definition does allocate the burden of proof to the public. Instead of proving something is safe - the essence of the precautionary approach - the definition requires a proof of harm. This in effect forces communities to show they are hurt by a permit, rule or regulation in order for an agency to take action. That is not precautionary. It is reactionary.

Furthermore, what is "best available science?" Does this include a community-conducted epidemiological survey or is strictly studies done by peer reviewed scientific studies? Focusing solely on peer-reviewed studies ensures problems will not be addressed until the latest possible time rather than the earliest. As stated above, the peer-reviewed scientific approach also limits the amount communities can be involved in determining when the threat of harm is too much. These approaches undercut CalEPA's attempts to implement an environmental justice plan that actually addresses disproportionate impacts.

3. Cal/EPA's Public Participation Plan Focuses on Public Outreach while Minimizing Public Input.

CalEPA's statement on public participation underscores the weaknesses of its

¹This bias also overlooks the fact that science is not objective. Results can be skewed based on assumptions, methods of analysis and desired outcome.

environmental justice plan. It reads:

All members of the public shall have equal access to decision-making processes of each Board, Department & Office (BDO) within CalEPA. Efforts to engage and inform the public will begin early in the decision-making process and continue through implementation of the decision. Public comment will be fully considered and incorporated when appropriate and feasible.

CalEPA's commitment to equal access is good. However, if decisions are made in Sacramento during the daytime, this will limit who can be involved because not all stakeholders have equal resources.

CalEPA's statement on public participation also incorporates the flaws of its definitions. By including language such as "appropriate" and "feasible," the statement limits the ways the public can influence the outcomes of the decision-making process. Based on its definitions of the precautionary approach and multi-media cumulative impacts, CalEPA is only considering "scientific" data thereby precluding grassroots public comment. It can be assumed that non-science based comments will not be considered "appropriate" or "feasible." At the very least CalEPA should incorporate a requirement that agencies should respond to public comments to inform the public why its comments were or were not incorporated into a decision.

4. The Central Valley Pilot Project should be Revised to be More Inclusive and Health Protective.

According to DPR's implementation schedule, the Local Advisory Group (LAG) will not be formed until after the project objectives are finalized. In order to benefit from local community involved and allow community buy-into the project, the LAG should be formed in time to influence the final objectives of the project.

The pilot project also omits any plans to collect health data from the community either in the form of a health survey or bio-monitoring. Instead, the project objectives are to compare monitoring data with pre-set Reference Exposure Levels (REL). This wastes an opportunity to determine the protectiveness of the RELs themselves. The pilot project needs to examine the health of the community currently to determine whether or not the community bears a disproportionate impact from pesticide exposure.

Conclusion

The Phase I Recommendations lack clarity and fail to take into account the resources of low income communities and communities of color. Without appropriate consideration to these issues, CalEPA's Environmental Justice Strategy will not succeed in evaluating or addressing disproportionate impacts. The Recommendations should be withdrawn and rewritten in light of these comments.

Sincerely,

Caroline Farrell

Attorney at Law